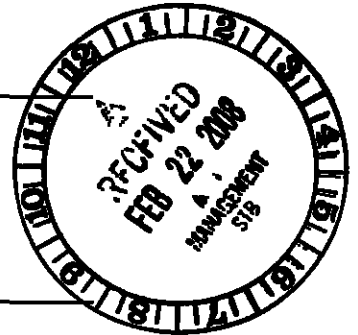


221664

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-6 (Sub- No. 430X)

**BNSF RAILWAY COMPANY
ABANDONMENT EXEMPTION
IN OKLAHOMA COUNTY, OK**



**ENTERED
Office of Proceedings**

FEB 22 2008

**Part of
Public Record**

**SUPPLEMENT TO
COMMENTS OF EDWIN KESSLER**

1. Edwin Kessler ("Kessler"), herewith files this Supplement to Comments of Edwin Kessler, and says:
2. On February 7, 2008, Chairman Nottingham ordered BNSF not to consummate the abandonment of the Line of railroad which is the subject of the above entitled proceeding.
3. On February 14, 2008, Tom Elmore, a party to this proceeding, observed, photographed, and spoke with an individual who identified himself as "Wesley," who was the foreperson of a crew that was salvaging the Line, and who stated his salvaging activities were pursuant to a salvage contract with BNSF. Mr. Elmore also had a conversation with Corey Burkhart, the BNSF Oklahoma City Roadmaster, who stated to Mr. Elmore that the Line was being salvaged pursuant to a BNSF salvage contract.
4. On February 15, 2008, Kessler filed his initial Comments of Edwin Kessler, wherein he stated the J.B.F. Tie and Rail Company had been engaged to begin dismantling the line. He attached black and white photocopies of color photographs Mr. Elmore had taken on February 14, 2008.

5. On February 19, 2008, Kessler filed color photocopies of the color photographs Mr. Elmore had taken on February 14, 2008, and filed a Verified Affidavit of Thomas Elmore, wherein Mr. Elmore testified that he had taken the photographs and had spoken with Wesley and Corey Burhhart.

6. On February 19, 2008, BNSF filed its Reply to February 15, 2008 Edwin Kessler Comments. BNSF attached to its Reply, a Verified Statement of Susan L. Odom, Manager – Network Strategy. In her Verified Statement, Ms. Odom stated “to her **current actual knowledge, information, and belief:**”

- A. A portion of the Line “was cut by BNSF forces on January 25, 2008.”
- B. No additional salvage work has since been performed by BNSF or any BNSF authorized contractor.
- C. BNSF has not issued a signed contract for the salvage work.
- D. “Any salvage activity performed on the subject line on February 14, 2008 was done so without the permission of and without direction from this office, which is responsible for doing so. Further, this office has no knowledge of or information on a company by the name of J.B.F. Tie and Rail Co. Mr. Kessler’s speculative statement that BNSF has engaged J.B.F. Tie and Rail Co. to begin dismantling the line is false.”

7. Mr. Elmore, on February 14, 2008, observed a crew from Lonestar Railroad Contractors, Inc. cutting the rails on the Line that is the subject of this proceeding. [The insignia on the side of the crew’s truck reads: Lonestar Railroad Contractors, Inc. This is clearly visible in Mr. Elmore’s photograph of the crew’s truck.] A crewperson was operating the rail saw that is imbedded in the rail in the top photograph of the first page of photographs. The second photograph depicts a rail that had just been cut. The South Shields Blvd. bridge is in the background, as is the temporary bridge that carries the Red Rock Line over the subject Line. Mr. Elmore spoke with the foreperson, Mr. Wesley. Wesley stated he had a contract to salvage the Line. If the Board would like to verify what Wesley said, it may do so by calling **Wesley at: (870) 833-2858**. Mr. Wesley indicated he lived in Little Rock, Arkansas, and was concerned that he would not be paid for his expenses in mobilizing his crew to Oklahoma City, and for the salvage work he had done to date.

8. Mr. Wesley indicated he had a contract with **JVS Tie and Rail Company**, which is based in the state of Washington. **Jason Shaw** is the president of JVS Tie and Rail Company. His telephone number is: **(509) 430-8806**. Mr. Shaw indicated he had a contract with BNSF to salvage the Line. This information may be verified by calling Mr. Shaw.

9. On February 15, 2008, a video crew from Oklahoma City TV station KETA Channel 13, videotaped individuals removing rails from the site where Mr. Elmore took his photographs, and videotaped the red truck tractor and semi-trailer, that is depicted in the bottom photograph on page 2 of the photographs, driving from the site with a full load of rails. This information may be verified by calling **Bob Sands** at **(405) 841-9256**, at KETA Channel 13, and / or by viewing the video tape that was produced by this video crew.

10. Mr. Elmore did speak with Corey Burkhardt, who did identify himself as the BNSF Roadmaster for this Line, and who did state the salvage work was being performed pursuant to a salvage contract with BNSF.

11. **IF** Ms. Odom had not been informed that a salvage contract had been let, and **IF** she had not been informed that salvage work was ongoing, then Ms Odom may not have knowingly perjured herself, since Ms. Odom's oath stated her representations were based on her **current ACTUAL knowledge, information, and belief**.

12. If the Board deems BNSF's false or misleading representations to the Board in this matter warrant further investigation, then Kessler would ask that the Board issue a schedule for discovery, so that Kessler may depose Ms. Odom, Mr. Burkhardt, Mr. Wesley, Mr. Shaw, and other individuals who had knowledge of the salvage operations.

13. Kessler would also request that the Board admonish BNSF from making any further false or misleading representations to the Board. [This is the latest in a series of false and misleading statements BNSF has made to the Board, starting with BNSF's Verified Statement from Richard A. Batie on September 22, 2005, wherein Mr. Batie falsely stated "No local traffic has moved **ON the line** for at least two (2) years prior to the date hereof," and most recently by BNSF's

counsel attempting to represent to the Board that local traffic to the Producer's Co-Op Oil Mill was served via the Red Rock line, rather than the subject Line, by stating the Co-op was served by the Red Rock Subdivision, without elaborating on which line of railroad the Red Rock Subdivision crew physically had to operate its consist on, in order to get to the Co-op rail siding.]

Respectfully,



Edwin Kessler

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2008, a copy of the foregoing Supplement to Comments of Edwin Kessler, was served by first class mail, postage prepaid, upon the parties of record noted below.



Edwin Kessler

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